

During this year again many senior officers and non-commissioned officers will change their duty stations and many retire. When that happens, their subordinates often wish to honor their service to the organization and, if retiring, to the Army and the United States. In addition to the ceremonies and other celebrations, gifts of refreshments, food, entertainment, plaques and other remembrances are often involved. These gifts create issues under the Standards of Conduct for Employees of the Executive Branch (all Federal civilian employees) and Department of Defense 5500.7-R, The Joint Ethics Regulation (JER), which applies to all DOD personnel, military and civilian. The following Article will deal with gift issues.

WHAT IS THE GENERAL RULE? The general rule is two fold. First, employees may not directly or indirectly give gifts to an official superior, or solicit other employees to contribute to or give a gift to an official superior. Second, employees may not accept gifts from employees who are paid less than they are unless there is a personal basis justifying the gift and there is no superior-subordinate relationship between them.

ARE THERE EXCEPTIONS? The normal social interaction of the workplace requires these basic rules against gifts to protect the junior employees, avoid coercion and to ensure the senior employees do not abuse their official position for their own gain or that of someone else. Nevertheless, the same social interaction typical in the work environment requires some exceptions to the rule. These exceptions fall into two categories: the general “occasional basis” and the “special, infrequent occasions” exceptions.

Occasional basis: These are the common sense situations, most of which hardly seem to need an exception. With the blanket prohibition, however, the exceptions are needed so as not to interfere with normal office interaction. The exceptions are as follows:

- Food and refreshments shared in the office.
- Personal hospitality at home of a type and nature customarily provided by the employee to friends.
- Customary gifts given in connection with receipt of personal hospitality.
- Items other than cash, with an aggregate value of \$10 or less on any occasion on which gifts are traditionally given or exchanged.

This means that it is perfectly acceptable to bring a cake to the office or to bring dishes of food for an office pot luck. Employees may invite their supervisor to dinner at their home, but not their favorite restaurant. When employees are invited to their supervisor’s home for dinner they may bring with them a bottle of wine or flowers. Members of an office may participate in a holiday exchange of gifts as long as no one feels pressured to participate and the value is no more than \$10.00

While the exception listed above permits employees to give gifts to their bosses for many different occasions, we suggest that it be used sparingly. Just because an exception permits a gift, does not mean it is always appropriate or necessary, especially in a military environment.

Solicitation of contributions is not permitted under this occasional basis exception except for the occasional food and refreshments to be shared in the office among several employees. Accordingly, even though a birthday gift for the boss might be technically permissible, contributions may not be solicited for the gift.

Special, infrequent occasions: This category permits a gift appropriate to the occasion and solicitations of contributions in a nominal amount from Department of Defense of separate service department employees in donating groups in the following two situations:

- Infrequent occurring occasions of personal significance such as marriages and birth of children, but not birthdays or other occasions celebrated annually, promotions or official visits.
- Occasions that terminate the superior-subordinate relationship, such as retirements, resignations or transfers.

The latter exception comes into play often within the Department of Defense during the normal rotational cycle. Gifts from subordinates upon retirement and permanent change of station (PCS) are permitted.

DOD has supplemented this rule in the JER to require that any gift(s) “appropriate to the occasion” should not generally exceed \$300 in value from the donating group. This general \$300 limit does not include the cost of food, refreshments and entertainment provided to the honoree and his personal guests to mark the occasion for which the gift is given. The JER also defines the nominal amount that may be solicited in the way of voluntary contributions as not exceeding \$10. An individual is free to contribute more, but for military personnel, enlisted personnel will not be solicited for any contribution.

Donating group is not defined. This permits employees to do what makes sense under the circumstance. Before proceeding with gifts from more than one donating group, employees should work with the installation Ethics Counselor. This will avoid any embarrassing situations both for the employees and the individual they are trying to honor. For example it might be appropriate for each company to give a gift for a departing battalion commander, but not for each platoon or section. The same may be said that while a commander’s staff may be a donating group, each staff section may not..

Donating groups may not band together to purchase the departing official, such as a commander, one large gift intended to circumvent the \$300 cap or to piecemeal purchase the gift. For example, one donating group buys a favorite military print for the official at a cost of \$150, while the next donating group pays for the framing at a cost of \$175. The gift costs \$325 and is prohibited. Similarly, a set of \$1500 golf clubs including bag, clubs and balls would be improper if piecemealed out among 5 donating groups. One group, one complete gift.

The definition of “donating groups” does not include private or non-Federal organizations who wish to give a gift for a departing official such as a commander. For instance, the local of Chamber of Commerce may not present a departing commander a \$200 tea set. The \$300.00 rule does not apply to organizations that seek to do business with the government, or to non-Federal organizations or groups who give the gift to an individual because of his or her official DOD position. Different rules apply to this gift; the limit would be \$20.00 and there is no exception in this case. Accordingly, the gift would have to be returned.

The rules on gift giving may seem complex, but the rules are simply, it's the facts that complicate the matter. The rules of ethical conduct are there to ensure that as, Federal employees, we do not benefit ourselves in performing our duties or put our subordinates in a difficult position. Most of the time these rules seem to conflict with our the natural, well-intentioned generosity as employees to recognize a supervisor. The Fort Meade Staff Judge Advocate Office has Ethics Counselors who can assist you in navigating the many rules that relate to our conduct and behavior as employees of the Department of Defense.